UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:	)	
	)	
HOFFMAN ADJUSTMENT CO.,	)	CASE NO. 02-60538 JPK
	)	Chapter 11
Debtor.	)	

MEMORANDUM OF DECISION ON UNITED STATES OF AMERICA'S MOTION FOR SUMMARY JUDGMENT

This Chapter 11 case was initiated by the debtor's voluntary petition filed on February 8, 2002. On November 25, 2002, the debtor initiated adversary proceeding number 02-6272 by the filing of its Complaint for Determination of Tax Liability, which sought a determination pursuant to 11 U.S.C. § 505(a) that proposed assessments by the Internal Revenue Service for income tax for the tax years ended December 31, 1998 and December 31, 1999 were erroneous. On July 2, 2003, the United States of America, on behalf of its agency the Internal Revenue Service, filed a motion to dismiss the debtor's Chapter 11 bankruptcy case. By order entered on February 5, 2004, the Court directed the United States' motion to dismiss to be presented as a motion for summary judgment. The matter now before the Court is the United States of America's motion for summary in the contested matter arising from its motion to dismiss the debtor's Chapter 11 case.

The Court has jurisdiction over this contested matter pursuant to 28 U.S.C. § 1334(a), 28 U.S.C. § 157, and N.D.Ind.L.R. 200.1(a). This contested matter is a core proceeding within the definition provided by 28 U.S.C. § 157(b)(2)(A).

I. Record Before the Court

The United States of America, on behalf of its agency the Internal Revenue Service, ("United States") filed its Motion to Dismiss Chapter 11 Bankruptcy and to Stay Adversary Proceeding No. 02-06272 on July 2, 2003. By order entered on September 19, 2003, the Court established the discovery deadline with respect to the contested matter arising from the United States' motion. Also on September 19, 2003, the Court entered an order in adversary

proceeding number 02-6272 which stayed all further proceedings in that adversary proceeding pending further order of the Court. As memorialized in its order entered on February 5, 2004, at a status conference before the Court on February 3, 2004, the Court advised the parties that the United States' motion to dismiss the debtor's main case would be determined in advance of determining any further matters in the adversary proceeding. Matters in the adversary proceeding came to rest with the January 15, 2004 filing by the debtor of its Motion to Amend Adversary Complaint, and the filing by the United States on February 11, 2004 of its Response in Opposition to the Debtor's Motion to Amend Complaint.

The United States filed its motion for summary judgment on March 24, 2004, together with a memorandum and materials in support of that motion. The debtor's response to the government's motion, together with supporting materials, was filed on June 22, 2004. By correspondence docketed on June 22, 2004, the United States declined the opportunity to file a reply to the debtor's response.

II. Standards for Review of a Motion for Summary Judgment

The procedural mechanism of summary judgment is provided by Rule 56 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by B.R. 7056. The principal standard to be followed by the Court in determining a motion for summary judgment is stated as follows in Fed. R. Civ. P. 56(c):

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The inquiry that the court must make is whether the evidence presents a sufficient disagreement to require trial or whether one party must prevail as a matter of law. *Anderson v. Liberty Lobby*, 106 S. Ct. 2505, 2509-10 (1986). In deciding a Motion for Summary Judgment, the Court should not "weigh the evidence." *Anderson*, 477 U.S. at 249, 106 S. Ct. at 2510-11;

Illinois Bell Telephone Co. v. Haines and Co., Inc., 905 F.2d 1081, 1087 (7th Cir. 1990). However, "if evidence opposing a summary judgment is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson*, 106 S. Ct. at 2511; *Trautvetter v. Quick*, 916 F.2d 1140, 1147 (7th Cir. 1990).

The moving party bears the burden of showing that there is an absence of evidence to support the non-movant's case; *Celotex Corp. v. Catrett*, 106 S. Ct. at 2548, 2554 (1986), i.e., the lack of a genuine issue of material fact. *Big O Tire Dealers, Inc. v. Big O Warehouse*, 741 F.2d 160, 163 (7th Cir. 1984); *Korf v. Ball State University*, 726 F.2d 1222, 1226 (7th Cir. 1984).

When ruling on a motion for summary judgment, inferences to be drawn from underlying facts contained in such materials as attached exhibits and depositions must be viewed in a light most favorable to the party opposing the motion. *United States v. Diebold, Inc.*, 82 S. Ct. 993, 994 (1962); *See also, Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 106 S. Ct. 1348, 1356, (1986) (All inferences to be drawn from the underlying facts must be viewed in a light most favorable to the nonmoving party); *Yorger v. Pittsburgh Corning Corp.*, 733 F.2d 1215, 1218 (7th Cir. 1984); *Marine Bank Nat. Ass'n. v. Meat Counter, Inc.*, 826 F.2d 1577, 1579 (7th Cir. 1987).

When a motion for summary judgment is made and supported by the movant, F.R.C.P. 56(e) requires the nonmoving party to set forth specific facts, which demonstrate that genuine issues of fact remain for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 106 S. Ct. at 1355; the opposing party may not defeat the motion by merely relying on the allegations or denials in its pleadings.

III. The Record Before the Court on Summary Judgment

Rule 56(c) of the Federal Rules of Civil Procedure, made applicable to this contested matter by B.R. 9014/B.R. 7056, provides the following:

> The [summary] judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

N.D.Ind.L.B.R. B-7056-1 states the manner in which the parties are to establish the factual record to be presented to the Court on a motion for summary judgment, as follows:

> In addition to complying with the requirements of N.D.Ind.L.B.R. B-7007-1, all motions for summary judgment shall be accompanied by a "Statement of Material Facts" which shall either be filed separately or as part of the movant's initial brief. The "Statement of Material Facts" shall identify those facts as to which the moving party contends there is no genuine issue and shall be supported by appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence. Any party opposing the motion shall, within thirty (30) days of the date the motion is served upon it, serve and file a "Statement of Genuine Issues" setting forth all material facts as to which it is contended there exists a genuine issue, supported with appropriate citations to discovery responses, affidavits, depositions or other admissible evidence, together with any affidavits or other documentary material controverting the movant's position. The "Statement of Genuine Issues" may either be filed separately or as part of the responsive brief. In determining the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are controverted in the "Statement of Genuine Issues" filed in opposition to the motion, as supported by the depositions, discovery responses, affidavits and other admissible evidence on file.

The United States' Statement of Material Facts, incorporated into its memorandum, has not been controverted by a "Statement of Genuine Issues" as filed by the debtor. The debtor's response includes the "Affidavit of Joseph Hoffman", and the first two pages of the United States' Response to Debtor's Interrogatories, as apparently propounded by the debtor to the government in discovery conducted with respect to the United States' motion to dismiss the debtor's case.[1]

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[1]Rule 5(d) of the Federal Rules of Civil Procedure provides that certain discovery requests and responses thereto "must not be filed until they are used in the proceeding or the court orders filing". B.R. 7005 incorporates this rule into the rules of procedure for adversary

The material facts with respect to the United States' motion for summary judgment are undisputed; the Court determines those material facts to be the following:

1. Hoffman Adjustment Company ("Debtor") was incorporated as an independent insurance adjustment agency on July 6, 1990.

2. Joseph Hoffman was the president, 100% shareholder, and employee of the Debtor.

3. The Debtor ceased business operations in or before 1998.

4. At the time of the filing of its Chapter 11 bankruptcy case, the Debtor did not maintain any bank accounts.

5. At the time of the filing of its Chapter 11 bankruptcy case, the Debtor did not have any employees.

6. The schedules filed by the Debtor in its Chapter 11 case lists total assets of $16,854.00 and total liabilities of $1,407.00.

7. The only asset of the corporation listed in Schedule B of its schedules is a note payable by Joseph Hoffman, in the amount of $16,854.00.

8. The sole general unsecured creditor listed in Schedule F of the Debtor's

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proceedings; however, in this contested matter, B.R. 9014 controls, and this latter rule does not incorporate B.R. 7005 as a rule of procedure in a contested matter: Thus Fed .R. Civ. P. 5(d) is not technically applicable in this matter. This Court has no separate local rule which governs the filing of discovery materials. As a result, in a contested matter, discovery materials are to be formally filed with the court, anomalous as that may be. A significant portion of the United States' Statement of Material Facts is derived from Exhibits 1 and 2 as attached to its memorandum: these exhibits constitute responses of the debtor to a set of requests for admissions, and a set of interrogatories. As noted, the debtor's response incorporates two pages from the United States' answers to interrogatories propounded upon it by the debtor. Neither party has either separately filed these discovery materials, or sought to exclude the foregoing discovery documentation – as attached to their respective summary judgment submissions -- from the record to be considered by the Court on the United States' motion for summary judgment. Because the aforementioned materials have now been placed on the record by the respective parties, the Court deems those materials to constitute a part of the record for review of the motion for summary judgment pursuant to B.R. 9014 and 7056/ Fed .R. Civ. P. 56(c). The Affidavit of Joseph Hoffman comprises a portion of the record pursuant to B.R. 9014/7056 and Fed .R. Civ. P. 56(e).

schedules is Hoffman Adjustment Company Trust, with a claim of $1,407.00.

9. The Hoffman Adjustment Company Trust is a trust organized by Joseph Hoffman in 1995, of which Joseph Hoffman is the trustee, and by whom Joseph Hoffman is employed as an insurance adjuster.

10. Schedule E of the Debtor's schedules lists the Indiana Department of Revenue and the Internal Revenue Service as creditors holding unsecured priority claims in unknown amounts.

11. The United States of America, Internal Revenue Service, has filed an amended claim – docketed on the claims register in the Debtor's Chapter 11 case – stating an unsecured priority claim in the amount of $178,473.90. The Hoffman Adjustment Company Trust has filed a proof of claim – docketed on the claims register in the Debtor's Chapter 11 case – stating a general unsecured claim in the amount of $1,407.00. The Indiana Department of Revenue has filed a proof of claim – docketed on the claims register in the Debtor's Chapter 11 case – stating a priority claim of $20,653.15, and a general unsecured claim of $4,000.00.

12. The Debtor filed monthly reports for the months of September 2002 through and including May 2003. Each of these monthly reports states that the Debtor had no cash receipts, and that the Debtor made no cash disbursements, during the respective month for which a report was filed. Each of these reports also reflects that the Debtor had no creditors, and paid no taxes during the respective reporting period reflected by the report. Each of the reports also states that the Debtor had no bank accounts and no accounts receivable, with the exception of the $16,854.00 note obligation of Joseph Hoffman stated in its Schedule B.

13. The Affidavit of Joseph Hoffman states that in the event that the Court should determine in adversary proceeding number 02-6272 that the Debtor has federal tax liability, "then the Hoffman Adjustment Company Trust" will be collapsed and all assets will revert to Hoffman Adjustment Company and the tax liabilities will be repaid through a Plan of Re-

organization; paragraph 7 of the Affidavit of Joseph Hoffman. The affidavit further states that "Hoffman Adjustment Company Trust has sufficient income to repay any tax liabilities of Hoffman Adjustment Company pursuant to a Plan of Re-organization;" *ibid.,*paragraph 8.

14. The Debtor initiated adversary proceeding number 02-6272 by the filing of its complaint on November 25, 2002. That complaint sought a determination that the Hoffman Adjustment Company Trust was legitimate, and that proposed tax assessments by the Internal Revenue Service for the calendar years ended December 31, 1998 and December 31, 1999 against the debtor corporation were erroneous.

15. By order entered on December 3, 2003, the Court granted the United States' October 30, 2003 Motion to Withdraw the IRS' Proof of Claim, and the amended claim filed by the United States on December 12, 2002 was withdrawn.

16. The Internal Revenue Service has made assessments of federal taxes against the Debtor for the tax periods ended 12/31/1998 and 12/31/1999.

IV. Legal Analysis

The United States asserts that the Debtor's Chapter 11 case should be dismissed for "cause" pursuant to 11 U.S.C. § 1112(b), including lack of good faith by the Debtor in the filing of the case. The crux of the government's argument is that the Debtor was not an entity engaged in any business activity on the date of its filing of its Chapter 11 case, and has never engaged in any business activity since that date. The government essentially contends that the lack of assets [other than a debt owed the Debtor by an insider, as defined by 11 U.S.C. § 101(31)], the lack of any employees, the lack of any bank accounts, the fact that it has not been engaged in business since 1998 or before – all contribute to the establishment of "cause" for dismissal by underscoring the alleged fact that the Debtor cannot effectively reorganize. The Debtor responds that its does in fact have debts, principal among them the federal tax liabilities for the 1998 and 1999 tax years which it contests, and that (based upon the Affidavit of Joseph

Hoffman) it has the ability to reorganize by monies infused into the corporation by that individual in the event that it is determined to owe federal taxes to the United States.

On the first page of its Memorandum in Response to United States' Motion for Summary Judgment, the Debtor has succinctly stated the purpose for which it sought the protection of the Bankruptcy Code, as follows: "Debtor filed the instant Chapter 11 Bankruptcy for the purpose of determining what if any tax liability was owed, and an adversary action under section 505 of the United States Bankruptcy Code for that purpose."

The issue before the Court is whether a debtor entity having this Debtor's characteristics can proceed with a case under Chapter 11 of the Bankruptcy Code for the purpose of determining tax liabilities under 11 U.S.C. § 505(a). For the reasons subsequently stated, the Court determines that this Chapter 11 case cannot be sustained, and that the United States' motion to dismiss it must be granted.

11 U.S.C. §1112(b) in pertinent part states:

> (b) ... (O)n request of a party in interest ... and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause ...

The principal purpose of Chapter 11 of the Bankruptcy Code is to provide a mechanism by which a business enterprise may restructure its debts so that it can remain in business, or liquidate its business, in a manner which best accommodates the interests of the debtor and its creditors. As stated in *In re Castleton Associates Limited Partnership*, 109 B.R. 347, 350 (Bankr. S.D.Ind. 1989):

> Central to the "aims and objectives of bankruptcy philosophy" is whether the debtor has an ongoing business which it intends to reorganize. See, *Matter of Winshall Settlor's Trust*, 758 F.2d 1136, 1137 (6th Cir.1985). What business form does the debtor take? What are the assets of the estate? What income does the debtor produce? Is the income sufficient to sustain operations? What is the debtor's business? How many employees does the debtor have? What is preserved if the debtor is allowed to reorganize?

> "Resort to the protection of the bankruptcy laws is not proper ... [where] there is no going concern to preserve, there are no employees to protect, and there is no hope of rehabilitation, except according to the debtor's 'terminal euphoria' " *Matter of Little Creek Development Co.*, 779 F.2d 1068, 1073 (5th Cir.1986).

In reviewing whether "cause" exists for dismissal of a case, this Court is bound by the decision of the United States District Court for the Northern District of Indiana in *In re Grieshop*, 63 B.R. 657 (N.D.Ind. 1986). As stated therein, the determination of "cause" involves a multi-factor analysis, as follows:

> In determining whether good faith exists in a given case, the court must consider all underlying facts and circumstances. *In re Thirtieth Place, supra*, 30 B.R. at 505 (quoting *In re Loeb Apartments, Inc.*, 89 F.2d 461, 463 (7th Cir. 1937)). Thus, many cases have developed sets of factors which tend to recur in bankruptcy petitions in which good faith is an issue. As gleaned from the cases, bad faith may exist where:
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> 1. The debtor has few or no unsecured creditors.
> 2. There has been a previous bankruptcy petition by the debtor or a related entity.
> 3. The pre-petition conduct of the debtor has been improper.
> 4. The petition effectively allows the debtor to evade court orders.
> 5. There are few debts to non-moving creditors.
> 6. The petition was filed on the eve of foreclosure.
> 7. The foreclosed property is the sole or major asset of the debtor.
> 8. The debtor has no ongoing business or employees.
> 9. There is no possibility of reorganization.
> 10. The debtor's income is not sufficient to operate.
> 11. There was no pressure from non-moving creditors.
> 12. Reorganization essentially involves the resolution of a two-party dispute.
> 13. A corporate debtor was formed and received title to its major assets immediately before the petition and
> 14. The debtor filed solely to create the automatic stay.

63 B.R. at 662-663.

Application of the facts of this case to the factors outlined in *Grieshop, supra*., discloses the following. First, because this not a so-called "single asset" case, or a case filed at the eleventh hour to prevent a foreclosure or other drastic action with respect to a debtor's property,

factors enumerated as 6, 7, and 14 simply have no application to this case. Next, the Debtor has not run afoul of factors 2, 4 and 13.[2] No argument is advanced by the United States concerning the pre-petition conduct of the Debtor, and thus factor 3 is not at issue. It is clear that the Debtor has few unsecured creditors; that there are few debts to non-moving creditors; that the Debtor has no ongoing business or employees; that there was no pressure from non-moving creditors which caused the Debtor to file this case; that reorganization essentially involves the resolution of a dispute between the Debtor and the Internal Revenue Service – and thus that factors 1, 5, 8,11 and 12 go against the Debtor. Factor 10 does so as well, because the Debtor has no income and thus is not in operation.

Factor 9 concerns a debtor's ability to reorganize. The Debtor contends that in the event that it is determined to owe federal tax liability, it can fund a plan to pay that liability by means of collapsing the Hoffman Adjustment Company Trust, thereby revesting the Debtor with the assets and income stream of that entity. However, there is no evidence before this Court of any assets or income of the Hoffman Adjustment Company Trust, either presently or projected into the future. Moreover, neither that entity nor this Debtor is making any offer to engage in those funding activities – essential to "reorganization" -- at any time until an indebtedness owed by the Debtor is determined. In short, there is absolutely nothing but "serendipity and speculation" in this record that the Hoffman Adjustment Company Trust will have any assets or income stream in the future, as the future is defined at the time that the Debtor may be determined to owe federal tax liabilities.

The Debtor acknowledges that it owes an indebtedness to one general unsecured creditor (albeit an insider), and the Indiana Department of Revenue has filed a proof of claim which the Debtor has not challenged. There are thus debts now owed to creditors apart from the

[2] In fact, the Debtor divested itself completely of its major assets prior to filing of the case.

Internal Revenue Service which the Debtor has not proposed to pay in any way or by any means. If it were truly the Debtor's intention to reorganize as an ongoing business, then the fact that its liabilities to the United States have not been determined would not preclude it from engaging in conduct commensurate with that goal.

Factors 2, 3, 4 and 13 in the *Grieshop* list connote an element of bad faith in the filing of a case, which the record does not sufficiently sustain in this case. Because the Debtor had no assets when it filed, elements 6, 7 and 14 simply have no application to the circumstances of this case: rather than assisting the Debtor in overcoming the motion to dismiss, those factors simply are not relevant in any consideration of that motion. All of the other factors in the *Grieshop* list relate to whether or not there is a business or other commercial enterprise in existence which will be sustained for the benefit of the Debtor and creditors in the event the bankruptcy case is allowed to continue, and every one of those elements (1, 5, 8, 9, 10, 11 and 12) weigh conclusively against the Debtor, based upon the record before the Court.

The Debtor is correct in pointing out that any single factor in the *Grieshop* list is not sufficient to sustain a motion to dismiss. However, the aggregation of factors relevant to the issue of whether this case should be dismissed "for cause" – as contrasted to the concept of "bad faith" – establish conclusively that this Chapter 11 case should not continue.

This case is factually similar to the circumstances of the debtor in *In re Klein*, 100 B.R. 1004 (S.D.Ill. 1989) in which the bankruptcy court's determination that a Chapter 11 case should not be converted to a case under Chapter 7 was reversed in circumstances where the debtor was unemployed, had minor assets with only speculative potential recovery value for the benefit of creditors, and had no employees or existing viable business. The present nonexistence of a viable economic entity having any emolument or asset in and of itself establishes "cause" for dismissal.

This "cause" is further underscored by the debtor's acknowledged reason for filing the

case in the first place. As admitted in the Debtor's memorandum, this Chapter 11 case was filed solely as a mechanism to determine the Debtor's federal tax liabilities under 11 U.S.C. § 505(a). As stated in *In re New Haven Projects Ltd. Liability Co.*, 225 F.3d 283, 290 (2nd Cir. 2000):

> Section 505 was enacted to protect creditors from the prejudice caused by an ailing debtor's failure to contest tax assessments. It was not enacted to afford debtors a second bite at the apple at the expense of outside creditors. (citations omitted)

Here there are no creditors to protect, in that there is no asset or debtor-generated source of funding which is being jeopardized if the debtor is not allowed to pursue the *raison d'etre* for this case. Where only the debtor benefits from utilization of § 505, resort by a debtor to a determination under that section should be denied; *See, In re St. John's Nursing Home, Inc.*, 169 B.R. 795 (D.Mass. 1994).

Chapter 11 of the Bankruptcy Code has as its focus the restructuring or liquidation of a business entity for the benefit principally of the debtor's creditors. As stated in *In re Schlangen*, 91 B.R. 834, 837 (Bankr. N.D.Ill. 1988):

> Chapter 11 was designed to prevent the waste and reduction in asset values that result from unnecessary liquidation. Congress meant to encourage financial restructuring and to reestablish efficient business operations with the goals of permitting greater payments to creditors then could otherwise be made, while also preserving jobs and shareholders' interests. *See e.g., In re Victory Construction Co.*, 9 B.R. at 551-65; H.R.Rep. No. 595, 95th Cong., 1st Sess. 220-21 (1977), U.S.Code Cong. & Admin.News 1978, pp. 5787, 5963, 6179; *In re HBA East, Inc.*, 87 B.R. at 259. The good faith standard is the bankruptcy court's equitable mechanism for assuring that a Chapter 11 case at least has the potential to serve those purposes.

In *In re Winshall Settlor's Trust*, 758 F.2d 1136, 1137 (6th Cir. 1985), the Court stated:

> The purpose of Chapter 11 reorganization is to assist financially distressed business enterprises by providing them with breathing space in which to return to a viable state. *See In re Dolton Lodge Trust No. 35188*, 22 B.R. 918, 922 (Bankr.N.D.Ill.1982). "[I]f there is not a potentially viable business in place worthy of protection and rehabilitation, the Chapter 11 effort has lost its *raison d'etre.* . . . " *In re Ironsides, Inc.*, 34 B.R. 337, 339 (Bankr.W.D.Ky.1983). Although appellant contends that there is no explicit "ongoing

> business" requirement to Chapter 11 reorganization, such a requirement is inherent in the statute and clearly implied in 11 U.S.C. § 1112(b).

This case is the anthesis of the reasons for the existence of Chapter 11 as stated in the foregoing cases.[3]

Based upon the foregoing, the Court determines that there is no genuine issue as to any material fact with respect to the United States' motion to dismiss the Debtor's Chapter 11 case, and that said motion should be granted. The Debtor's Chapter 11 case should be dismissed.[4]

Dated at Hammond, Indiana on September 13, 2004.

J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
US Trustee
All Creditors
All Parties-in-Interest

[3] The Court further notes that even if this case were allowed to proceed, the Court would very probably abstain from the determination of tax liabilities sought by adversary proceeding number 02-6272. Although the record in that adversary proceeding has not been developed, the Court has an indication of the nature of the issues which will be advanced in that case: primarily the validity of "business" or "family" trusts as a mechanism for diverting or shielding income from federal income taxation. The Court is fully cognizant that this is a "hot button" issue for the Internal Revenue Service, and for individuals opposing the Internal Revenue Service on these issues. The complicated analysis of federal income tax law required in cases of this type should be made by a court (either a United States District Court or the Tax Court, depending upon the mechanism sought to be utilized by the Debtor to appeal an adverse decision by the Internal Revenue Service, if one were to arise) which has far more experience and precedent-making capacity than does a United States Bankruptcy Court on issues of this nature. Because the sole purpose for the filing of this case is to determine complex federal income tax issues, any decision by the Court to abstain from that determination under § 505(a) would cause the Debtor's Chapter 11 case to be completely lacking in any foundational purpose.

[4] Based upon its determination of dismissal of the Chapter 11 case, the Court will enter an order of dismissal with respect to adversary proceeding number 02-6272.